

(i). The rest of paragraph (h) is optional.

(f) When financing payments are in the form of performance-based payments, the Performance-Based Payments clause at 52.232-32 requires that the subcontract terms include the substance of the Performance-Based Payments clause, modified to indicate that the contractor, not the Government, awards the subcontract and administers the performance-based payments, and include appropriately worded modifications similar to those noted in paragraph (e) of this section.

(g) When financing payments are in the form of commercial item purchase financing, the subcontract must include a contract financing clause structured in accordance with 32.206.

[65 FR 16281, Mar. 27, 2000, as amended at 67 FR 70521, Nov. 22, 2002]

(e) Retroactive price reductions resulting from contract terms for price redetermination or for determination of prices under incentive type contracts.

(f) Overpayments disclosed by quarterly statements required under price redetermination or incentive contracts.

(g) Delinquency in contractor payments due under agreements or arrangements for deferral or postponement of collections.

(h) Reimbursement of costs, as provided in 33.102(b) and 33.104(h)(1), paid by the Government where a postaward protest is sustained as a result of an awardee's misstatement, misrepresentation, or miscertification.

[48 FR 42328, Sept. 19, 1983, as amended at 60 FR 48275, Sept. 18, 1995; 61 FR 41470, Aug. 8, 1996]

Subpart 32.6—Contract Debts

32.600 Scope of subpart.

This subpart prescribes policies and procedures for the Government's actions in ascertaining and collecting contract debts, charging interest on the debts, deferring collections, and compromising and terminating certain debts.

32.601 Definition.

Responsible official, as used in this subpart, means the contracting officer (see subpart 2.1) or other official designated under agency procedures to administer the collection of contract debts and applicable interest.

32.602 General.

The contract debts covered in this subpart arise in various ways. The following are some examples:

- (a) Damages or excess costs related to defaults in performance.
- (b) Breach of contract obligations concerning progress payments, advance payments, or Government-furnished property or material.
- (c) Government expense of correcting defects.
- (d) Overpayments related to errors in quantity or billing or deficiencies in quality.

32.603 Applicability.

Except as otherwise specified, this subpart applies to all debts to the Government arising in connection with contracts and subcontracts for the acquisition of supplies or services, and debts arising from the Government's payment of costs, as provided in 33.102(b) and 33.104(h)(1), where a postaward protest is sustained as a result of an awardee's misstatement, misrepresentation, or miscertification.

[61 FR 41470, Aug. 8, 1996]

32.604 Exclusions.

This subpart does not apply to claims of the Government against military or civilian employees or their dependents arising in connection with current or past employment by the Government. Sections 32.613, 32.614, and 32.616 do not apply to claims against common carriers for transportation overcharges and freight and cargo losses.

32.605 Responsibilities and cooperation among Government officials.

(a) To protect the Government's interests, contracting officers, contract financing offices, disbursing officials, and auditors shall cooperate fully with each other to—

- (1) Discover promptly when a contract debt arises;

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(2) Ascertain the correct amount of the debt;

(3) Act promptly and effectively to collect the debt;

(4) Administer deferment of collection agreements; and

(5) Provide up-to-date information on the status of the debt.

(b) For most kinds of contract debts, including reimbursement of protest costs, the contracting officer has the primary responsibility for determining the amounts of and collecting contract debt. Under some agency procedures, however, the individual who is responsible for payment under the contract; e.g., the disbursing officer, may have this primary responsibility.

[48 FR 42328, Sept. 19, 1983, as amended at 60 FR 48275, Sept. 18, 1995]

32.606 Debt determination and collection.

(a) If any indication of a contract debt arises, the responsible official shall determine promptly whether an actual debt is due the Government and the amount. Any unwarranted delay may contribute to—

(1) Loss of timely availability of the funds to the program for which the funds were initially provided;

(2) Increased difficulty in collecting the debt; or

(3) Actual monetary loss to the Government.

(b) In determining the amount of any contract debt, the responsible official shall fairly consider both the Government's claim and any contract claims by the contractor against the Government. This determination does not constitute a settlement of such claims, nor is it a contracting officer's final determination under the Contract Disputes Act of 1978.

(c) The responsible official shall establish a control record for each contract debt, to include at least the following information:

(1) The name and address of the contractor.

(2) The contract number, if any.

(3) A description of the debt.

(4) The amount of debt and the appropriation to be credited.

(5) The date the debt was determined.

(6) The dates of demands for payment.

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(7) The amounts and dates of collections, as they occur.

(8) The date of any appeal filed or action brought in the Court of Claims under the Disputes clause.

(9) The status of collections. Examples include—

(i) Actions reported to the disbursing officer (name, location, and date);

(ii) Funds requested to be withheld by the disbursing officer;

(iii) Funds requested to be withheld by other offices (date and office);

(iv) Deferment or installment payment arrangement requested;

(v) Deferment or installment request reviewed;

(vi) Supplemental information requested to support deferment requests; and

(vii) Actions transferred to the contract financing office.

(d) Except in cases in which an agreement has been entered into for deferment of collections (32.613) or bankruptcy proceedings against the contractor have been initiated, the contractor shall be required to liquidate the debt by—

(1) Cash payment in a lump sum, on demand; or

(2) Credit against existing unpaid bills due the contractor.

(e) The responsible officials shall use all proper means available to them for collecting debts as rapidly as possible. Practices for ascertaining and collecting debts shall be comprehensive, dynamic, and as uniform as practicable. Full consideration shall be given to personal contact and followup.

[48 FR 42328, Sept. 19, 1983, as amended at 55 FR 38517, Sept. 18, 1990]

32.607 Tax credit.

(a) If the contractor is entitled to a tax credit under section 1481 of the Internal Revenue Code (26 U.S.C. 1481) and requests recognition of the credit in the debt collection, the responsible official shall comply.

(b) The tax credit shall be considered to reduce the amount of the debt as of the date when interest on the debt begins to accrue.

(c) The amount of the debt reduction shall be the amount of the tax credit certificate, if a certificate was issued by the Internal Revenue Service (IRS).